



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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April 7, 2000

By Facsimile

Mr. David Struhs
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32339

Post-it* Fax Note	7671 -	Date	# of pages 3
To FRED RAPACH	From P. HAZUEL		
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Dear Mr. Struhs:

As we recently discussed, the Environmental Protection Agency (EPA) has been reviewing legislation that is currently being proposed in Florida regarding the regulation of Aquifer Storage and Recovery (ASR) wells. In the Senate, the ASR provisions are proposed to be added as an amendment (Amendment 5) to SB 2140, which addresses "Demineralization Concentrate." In the house, HB 1757 already includes both the ASR and demineralization provisions. Although we have been focusing on the ASR provisions and offer the following comments on those provisions, we also need to work with your staff to develop a better understanding of the demineralization provisions since they appear to potentially modify the state's water quality standards, and the delegated NPDES permitting and enforcement programs.

EPA is concerned that the ASR legislation has the potential to subject the state's Underground Injection Control (UIC) Program delegation to review or challenge under the Safe Drinking Water Act (SDWA). Any challenges to the UIC program could slow down implementation of the proposed ASR pilot wells that are critical to the timely implementation of the Central and Southern Project, Comprehensive Review Study (Restudy). EPA has been and remains a strong partner and supporter in the development of the ASR concept for the Restudy and would like to work with the state to avoid any delays. EPA supports the flexible permitting approach that we developed for the Restudy ASR projects. However, the effect of this legislation is much broader, and could potentially threaten the state's underground sources of drinking water with contamination from the injected water. As noted below, we believe that this legislation is not necessary to move forward with the ASR component of the Everglades restoration process or implement the State's UIC Program. *

The UIC Program has been delegated to the state of Florida under the SDWA and must be consistent with the federal requirements. The legislation that we have reviewed (SB2140, Amendment 5, and HB 1757), could possibly weaken the state's UIC program, subjecting it to challenges for consistency with the federal program, and threatening the basis upon which the program was delegated. This program has already been the subject of a petition for withdrawal in

the past, and remains under close scrutiny by the public. Some of the concerns that we have identified in the legislation we reviewed include:

- An overly broad framework for establishing a zone of discharge that potentially conflicts with the endangerment provisions in the SDWA. There does not appear to be any limits to the zone of discharge, nor limiting requirements.
- Many terms in the legislation are either poorly defined or inconsistent with the federal terms in the SDWA and federal regulations.
- Allowing for a zone of discharge for sodium, total coliform, and secondary drinking water standards goes beyond the discussions EPA has been having with the state concerning these issues in the context of permitting the ASR wells as part of the Everglades restoration.
- The legislation proposes the concept of aquifer exemptions in the context of the undefined zone of discharge without allowing for public participation and EPA review as required by the federal regulations.
- There is no definition of what an ASR well is, nor is there any identified requirements for an ASR well in terms of minimum percent recovery of injected water, limits on the use of ASR, or limits on the injection.

* EPA continues to support the ASR concept as part of the Everglades restoration effort identified in the Restudy. EPA has been actively involved with the state of Florida and its federal partners throughout the development of the ASR water storage component. However, there are technical and regulatory questions that should be answered before the full set of ASR wells are implemented. In the Restudy, the Corps of Engineers has advocated a tiered approach with the drilling of two pilot wells in order to test this technology for use on the large scale required by the Restudy. Only after the technology is proven and it is shown not to cause the contamination of drinking water aquifers, can we responsibly consider moving forward.

As part of our involvement in the development of the ASR concept under the Restudy, on February 9, 1999, EPA provided an outline of the issues associated with the use of raw, or untreated, water in the Restudy ASR wells. In that letter, recognizing that recapturing lost water storage capacity is critical to the success of the Everglades restoration, EPA explained its concern with the potential contamination of underground sources of drinking water in the state. However, a review of the limited water quality data that was available for the proposed sources of the ASR waters (Lake Okeechobee and the Caloosahatchee River), indicated that total coliform may be the only contaminant present that would exceed the primary drinking water standards. Assuming that total coliform would be the only problematic contaminant present, EPA outlined a list of factors that would be applied in the permitting context and if met could be used to demonstrate that the aquifer would not be endangered in a way that would adversely affect the health of persons as required under the SDWA and UIC regulations. This approach could be implemented under the existing federal UIC program.

It is important to recognize that the February 9, 1999, letter clearly indicated that the use of this approach, for purposes of the Restudy only, was based on a specific list of factors being met when applied in the context of ASR permitting. In addition to a more comprehensive evaluation of the quality of the proposed source waters indicating that total coliform was the only parameter of concern, several other conditions must be met. These include demonstrating that the total coliform would experience a "die off" such that the water in the aquifer will not violate drinking water standards or pose an adverse health risk, and that the technology be proven to allow the recovery of the injected water. This analysis assumed that the discharges would be into a saline/brackish aquifer that has been suggested would result in this die-off of the coliform bacteria. Summarizing, EPA clearly premised this approach as applying only to total coliform under very specific and limited circumstances. We are concerned that this proposed legislation expands this approach, beyond this limited application and concept intended to be part of a permit process, and could result in the contamination of the state's underground sources of drinking water.

EPA has also reviewed the demineralization provisions and noted that this proposed legislation potentially modifies existing state water quality standards (WQSs) and certain NPDES permitting and enforcement provisions. To fully understand these provisions, EPA would like to discuss these proposed changes with your staff to ensure they are consistent with the requirements of the Clean Water Act. As we have done in the past in the development and modification of WQSs, EPA has worked closely with the state of Florida and we would like to continue to do that in this case.

In closing, EPA believes there is no current need for the ASR legislation to move the Everglades restoration or other ASR projects forward. EPA also would like to discuss the effects of the demineralization bill on the state's water quality standards and NPDES program so we may compare it to the CWA for constancy. EPA will continue to work closely with your staff on these issues. I look forward to discussing this with you at your earliest convenience.

Sincerely,



John H. Hankinson, Jr.
Regional Administrator

cc: Senator Latvala
Senator Bronson
Representative Constantine
Representative Alexander
Representative Sembler
Representative Wallace
Col. Joe Miller, ACOE
Frank Finch, SFWMD